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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,953	07/21/2003	Armando J. Castro	1391/1560	6299
28455	7590	01/12/2005	EXAMINER	
WRIGLEY & DREYFUS 28455 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			CORBIN, ARTHUR L	
		ART UNIT	PAPER NUMBER	1761

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/624,953	CASTRO ET AL.
	Examiner Arthur L Corbin	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
 - 4a) Of the above claim(s) 26-37 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) 20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-22-03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-25, drawn to a method of encapsulating a flavor and the product thereof, classified in class 426, subclass 650.
 - II. Claims 26-37, drawn to a chewing gum and method of making, classified in class 426, subclass 3.
2. The inventions are distinct, each from the other because:
3. The product and process in I. does not require the presence of chewing gum, as in II. The flavor in I could be used to flavor food products other than chewing gum, e.g. chocolate.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Mr. Shurtz on December 22, 2004, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-37 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-15 are indefinite in failing to recite the lower percent limit for the acacia gum (claim 1, line 6). Correction is required without new matter.

8. Claim 20 is objected to because of the following informalities: In claim 20, line 2, "25%" is mislabeled. Appropriate correction is required.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4, 6, 12-14, 16-21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honey et al (3,666,496, col. 3) or Porzio et al (5,603,971, cols. 8, 10 and 11). Both patents disclose a process of encapsulating a flavor with a composition including gum arabic, gelatin and corn syrup solids. Finding the optimum amount of each component would require nothing more than routine experimentation by one reasonably skilled in this art.

11. Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honey et al or Porzio as applied to claims 1-4, 6, 12-14, 16-21 and 24 above, and further in view of Soper (5,603,952, Ex. 1)

It would have been obvious to use fish gelatin as the gelatin in either primary reference since it is conventional to encapsulate flavors with a composition including gum arabic and fish gelatin, as evidenced by Soper.

12. Claims 7-11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honey et al or Porzio as applied to claims 1-4, 6, 12-14, 16-21 and 24 above, and further in view of Kramer et al (2,886,446, col. 1, lines 55-70 and col. 2, lines 29-30) or Japanese patent 1-186858, page 5, first paragraph. It would have been obvious to prepare the encapsulating composition in either primary reference by spray drying since it is conventional to prepare encapsulated flavorings by spray drying, as evidenced by either secondary reference. The spray drying temperature is not critical.

13. Claims 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honey et al or Porzio et al as applied to claims 1-4, 6, 12-14, 16-21 and 24 above, and further in view of Witkewitz et al (5,158,790, col. 3) or McGrew et al (5,266,336, claim 20).

It would have been obvious to use a fruit ester including ethyl butyrate as the flavor in either primary reference since such fruit esters are conventional flavors in confectionary products, e.g. chewing gum, as evidenced by either secondary reference.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af
January 10, 2005


ARTHUR L. CORBIN
PRIMARY EXAMINER

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